

RAINIER NATIONAL BANK,	:	Order Dismissing Appeal Without
Appellant	:	Prejudice and Remanding Case
	:	to Bureau of Indian Affairs
v.	:	
	:	
AREA DIRECTOR PORTLAND AREA	:	Docket No. IBIA 85-28-A
OFFICE, BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 12, 1985

On March 21, 1985, the Board of Indian Appeals (Board) received a letter from Rainier National Bank (appellant) seeking review of an apparently undated decision issued by the Portland Area Office, Bureau of Indian Affairs (BIA), received by appellant on December 18, 1984. The decision concerned Tulalip business lease no. 5071 between appellant and Edward Sam.

By order dated March 22, 1985, the Board made a preliminary determination that it had jurisdiction over the matter under the provisions of 25 CFR 2.19. The Board's determination was based on appellant's allegations that its appeal to the Deputy Assistant Secretary--Indian Affairs (Operations) had been ripe for decision for more than 30 days, and that no decision had been issued. The Board requested that the administrative record in the case be forwarded to it within 30 days.

On April 23, 1985, the Board received a memorandum from the Acting Deputy Assistant Secretary stating that BIA had been expecting additional filings from appellant, and was therefore, waiting for such filings or formal notification that appellant had filed all of its pleadings before issuing a decision. The memorandum indicated that the Board's order assuming jurisdiction was the first notification BIA had received that appellant did not intend to make any further filings. BIA thus believed that it had until April 27, 1985, in which to issue a decision.

The Board ascertained through a telephone conversation with BIA officials that the Deputy Assistant Secretary's memorandum had not been served on other parties to this appeal. BIA was requested to serve other parties. The Board has been informed that service was made.

Appellant's response to BIA's memorandum was received by the Board on June 6, 1985. Appellant asks the Board to dismiss its appeal without prejudice in order to allow the Deputy Assistant Secretary to issue a decision. Appellant further asks the Board to specify the date by which that decision must be issued.

Appellant's motion to dismiss this appeal without prejudice is granted. Although the Board does not have general authority to order the Deputy Assistant Secretary to issue a decision by a particular date, under the circumstances of this case, it appears that the Board would again have jurisdiction if a decision were not issued within 30 days from receipt of this order. If a decision is not rendered within that time, the Board would entertain a motion from appellant to reinstate its appeal with the Board. If a decision is timely rendered, appellant may alternatively exercise any rights it has to seek further review of that decision by the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed without prejudice, and the case is remanded to the Deputy Assistant Secretary--Indian Affairs (Operations).

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Bernard V. Parrette  
Chief Administrative Judge

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Jerry Muskrat  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge